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(283) Zainal Abedin, Dr. [Itahar—West Dinajpur].

Proceedings of the West Bengal Legislative Assembly assembled under the provisions of the Constitution of India

THE ASSEMBLY met in the Legislative Building, Calcutta, on Wednesday, the 29th November, 1967, at 1 p.m.

Present

MR. SPEAKER (Shri BIJOY KUMAR BANERJEE) in the Chair, 3 Ministers and 213 Members.

Ruling delivered by Shri Bijoy Kumar Banerjee, Speaker, West Bengal Legislative Assembly, on the 29th November, 1967.

[1—1-10 p.m.]

Mr. Speaker: Honourable Members, this House meets under extraordinary circumstances. I am prima facie satisfied that the dissolution of the Ministry headed by Shri Ajoy Kumar Mukherjee followed by the appointment of Dr. P. C. Ghose as Chief Minister and the summoning of this House on his advice is unconstitutional and invalid since it has been effected behind the back of this House. Pending a full and proper examination of the matter, in exercise of powers vested in me under rule 15 of the Rules of Procedure of this Assembly, I adjourn the House *sine die*.

The House will remember that when it was prorogued on August 1, the Council of Ministers was headed by the Chief Minister Shri Ajay Kumar Mukherjee. This was the Council of Ministers that was collectively responsible to this House in terms of article 164(2) of the Constitution.

As I understand the Constitutional position, the only authority competent to decide whether or not a Council of Ministers should continue in office is this House. An adverse vote against the Council of Ministers in this House necessarily leads to a position when that particular Council of Ministers no longer enjoys the confidence of this House and its continuance in office would be a violation of article 164(2) of the Constitution.

I am happy to state that this understanding of mine is supported by high precedent. In March, 1945 the then Government of Bengal was defeated in a vote taken on the demand for a grant in respect of Agriculture. The question arose as to the constitutional consequence of such a defeat. At that time my predecessor in office Shri Nausher Ali put the essence of the matter in clear terms. To quote him:

> "Sir Nazimuddin (the then Chief Minister) said yesterday that he would treat this as a snap division and not a censure. I am afraid the constitutional position has not been properly conceived. The Ministry is the creature of the House; this House can make and unmake the Ministry and the Governor is but the registering authority of the House. Any other course, I am afraid, would strike at the very root of democracy."

No doubt the circumsttances facing Shri Nausher Ali were different. But the essence of the matter, namely, that this House is the supreme authority in regard to making and unmaking Ministries, is the same. And this statement came from the lips of a presiding officer of this House when India was not free. Today when the sovereign Indian people have given unto themselves a Constitution, surely the authority of this House, has increased and not diminished.

This is why I find it extremely difficult to recognise Dr. Prafulla Chandra Ghose as Chief Minister and his colleagues Shri Harendra Nath Mazumdar and Dr. Amir Ali Molla as members of the Council of Ministers. Both the text of the Articles of the Constitution and the precedent quoted above recognise no discretion in the Governor in respect of the appointment of the Council of Ministers. He is merely a registering authority to use the expression of my predecessor; an authority whose constitutional duty is to recognise and implement the decisions of this House.

To an extent I have attempted to examine the method by which behind the back of this august Assembly, the Council of Ministers responsible to it has been removed. It would appear that on 21st November, 1967, the Governor of this State issued an order under article 164(1) whereby he proposed to "order that the Chief Minister Shri Ajoy Kumar Mukherjee shall cease to hold office with immediate effect". He further " directed that the Council of Ministers headed by him stands dissolved and other Ministers cease to hold office."

A careful reading of article 164(1) does not disclose the vesting of any such power of dissolution of a Council of Ministers by a Governor. Hence I do not find any legal basis for the act of dissolution.

I may also mention that the argument has been advanced that the words in article 164(1) "the Ministers shall hold office during the pleasure of the Governor" vest in the Governor the power to dismiss a Ministry. But this argument is without merit. For the same expression "pleasure of the Governor" finds place in article 165(3) with regard to the appointment of the Advocate-General. And none will question the appointment and dismissal of the Advocate-General is not within the Governor's discretion but has to be done on the advice of the Council of Ministers.

On a prima facie examination of the constitutional question involved, I find it impossible to recognise as legal, valid and constitutional the dissolution of the Council of Ministers, headed by Shri Ajoy Kumar Mukherjee.

It follows then that the appointment of the Council of Ministers headed by Dr. P. C. Ghose as Chief Minister is invalid and unconstitutional.

The order by which the Council of Ministers headed by Shri Ajoy Kumar Mukherjee was dissolved is dated 21st November, 1967. This Assembly, however, has been summoned under an order of the Governor which was issued only on 22nd November, 1967. In view of this I am unable to appreciate how this session of this Assembly can have any constitutional or legal validity. For if the order of the Governor of 21st November, 1967, is illegal and unconstitutional, evidently the Council of Ministers headed by Shri Ajoy Kumar Mukherjee not only continues in office but alone is competent to advise the Governor of the manner in which he is to exercise his powers under article 174(1), namely, the power to summon this Assembly. And only an Assembly summoned by the Governor acting under such advice would be validly and properly summoned. I must, therefore, confess my grave doubts about the validity of this session of the Assembly.

Honourable Members will appreciate that the Constitution and the Rules of Procedure charge me with the high responsibility of protecting the dignity and privileges of this august Assembly. And I would be failing in my duty if I did not uphold the rights and powers of this House in the face of attempts to infringe and restrict such rights.

The matters in issue are of the highest Constitutional importance. It is my regret that when an attempt was made to refer them for the opinion of the Supreme Court under article 143 such attempt was frustrated. It is beyond dispute that the issues go to the very root of democracy. It is obvious, therefore, that if I am to find out how exactly I should act so as to preserve and protect the privileges of this House I should need more time and then only give a considered ruling on the grave issues at stake.

This is why in exercise of my powers under rule 15, I have adjourned the House *sine die*.

Adjournment

The House was then adjourned at 1-10 p.m. *sine die*.

Note: The Assembly was prorogued with effect from 30th November, 1967 by a Notification No. 3819-A.R., dated the 30th November, 1967, published in the "Calcutta Gazette, Extraordinary", dated the 30th November, 1967.